IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.189-SB of 1995

Date of Decision: March 2, 2007

Bhup Singh

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.S.S.Dinarpur, Advocate,
for the appellant.

Mr.Vikas Chaudhary, AAG, Haryana,
for the State.

*****

RANJIT SINGH, J.

The appellant, though released on probation on being convicted for offences under Sections 379/430/506 IPC by the Addl.Sessions Judge, Bhiwani, is in appeal before this court against the said order. He claims that his conviction, as recorded, cannot be sustained. The appellant, who was prosecuted for irrigating his fields with the help of rubber pipe from canal water, appears to be justified in complaining that for this allegation he could not have

been charged and tried for offences under Sections 379/430/506 IPC.

Facts in brief are that on 28.1.1988, B.S.Beniwal, SDO, while being accompanied by Ishwar Singh, Naurang Ram, Rajbir Singh Junior Engineers and Ram Kumar Mate, found two persons aged 20 years irrigating their fields with the help of rubber pipe. They were also stated to be armed with Saw (Aari). When SDO and others made an attempt to snatch the pipe, the accused persons allegedly threatened the officials. They, however, managed to take the Saw. The identity of the accused was disclosed by Ram Kumar Mate as son of one Jai Lal Lamba, resident of Jui. The case was registered against the accused persons accordingly and on completion of investigation, they were charge-sheeted and prosecuted for offences under Sections 430/506 IPC. The appellant was found guilty of the charges and was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.3000/-. Addl.Sessions Judge, Bhiwani, while maintaining the conviction of the appellant, however, directed his release on probation for a period of two years on furnishing personal bond of Rs.10,000/-. It is against this order that the present appeal has been filed.

Mr.S.S.Dinarpur, the counsel for the appellant, apart from pointing out that the prosecution case was only supported by SDO B.S.Beniwal (PW-1) and not by the remaining witnesses inasmuch that they had not identified the accused-appellant, submitted that unauthorised use of canal water, as alleged, would not reveal any criminal offence. In this regard, he has drawn my attention to the case of Parkash Singh Vs. The State of Punjab,

1994(3) RCR 490 where it was so held. This was a case where a report was lodged with SHO, Police Station, Lambi in regard to irrigation of fields illegally from the canal water by fixing a pipe unauthorisedly. The FIR was registered on that basis. Whereafter the petitioner Parkash Singh had approached this court for quashing of the said FIR. This court in Parkash Singh's case (supra) allowed the petition and quashed the FIR holding that unauthorised use of canal water cannot be said to be an offence. Reliance was also placed on the case of Jawala Ram and others Vs. The State of Pepsu (now Punjab) and others , AIR 1962 SC 1246, wherein it is held that unauthorised use of canal water is not an offence and may only call for imposition of enhanced water charges under Rules 32 and 33 of the Pepsu Sirhind Canal Rules. The learned State counsel could not point out anything which would convey something contrary to the plea raised by the counsel for the appellant. He, however, would say that the appellant had also threatened the SDO, which would reveal an offence under Section 506 IPC. To my mind, the present case seems to be fully covered by the ratio of law laid down in above noted cases. The conviction of the appellant for an offence under Section 430 IPC cannot be sustained. Though SDO B.S.Beniwal (PW-1) had supported the case of prosecution in regard to advancing of threat, but his version does not find support from the other witnesses, who admittedly were accompanying him. They could not even identify the appellant. This would create a doubt in the prosecution case and on that count, it would be reasonable to say that the prosecution was unable to prove this charge against the appellant beyond a shadow of reasonable doubt.

The appeal is accordingly allowed and the conviction of the appellant is set-aside. The bail bonds and surety bonds, if any, furnished by the appellant in the trial court shall stand discharged.

March 02, 2007 (RANJIT SINGH)
ramesh JUDGE